

## **REMARKS / ARGUMENTS**

### **I. General Remarks**

Applicants respectfully request that the above amendments be entered, and further request reconsideration in light of the amendments and remarks contained herein. Applicants thank the Examiner for his careful consideration of this application.

### **II. Disposition of the Claims**

Claims 1-38 are pending in this application. Claims 39-68 were canceled in response to a restriction requirement, and claims 7 and 11-38 were withdrawn.

Claim 1 has been amended herein. Applicants respectfully submit that this amendment adds no new matter to the application and is supported by the specification as originally filed. All the above amendments are made in a good faith effort to advance the prosecution on the merits of this case.

Claim 1 stands rejected under the 35 U.S.C. § 112, first paragraph. Claims 1-6 and 8-10 also stand rejected under 35 U.S.C. § 102(e).

### **III. Remarks Regarding Rejection of Claims under 35 U.S.C. § 112, first paragraph**

Claim 1 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. With respect to this rejection, the Office Action states that:

Independent claim 1 has been amended to recite an additional step of “allowing the water soluble relative permeability modifier to interact with at least a portion of the subterranean formation thereby reducing the permeability of at least a portion of that portion of the subterranean formation to aqueous-based fluids.” There is no written description support for this limitation in the instant specification.

(Final Office Action at 3.) Applicants have amended claim 1 herein to modify the limitation added in the previous amendment, and respectfully submit that the limitation provided in this amendment is supported by the specification as filed. Therefore, Applicants respectfully request removal of this rejection with respect to claim 1.

**IV. Remarks Regarding Rejection of Claims under 35 U.S.C. § 102(e)**

Claims 1-6 and 8-10 are rejected under 35 U.S.C. § 102(e) as being anticipated by PCT Application Publication WO 03/056130 A1 by Couillet *et al.* (hereinafter "*Couillet*"). With respect to this rejection, the Examiner states that:

Although Couillet may not explicitly disclose the reduction of permeability of "at least a portion of the subterranean formation," because Couillet discloses treating a formation with the same relative permeability modifier (RPM) polymer compound as encompassed by the instant claims and thus possesses the same physical properties/effects, then Couillet is inherently disclosing reducing the permeability of "at least a portion of the subterranean formation" upon the addition of the disclosed RPM polymer compound in the Couillet's method of treating/fracturing a formation.

(Final Office Action at 4.) Applicants respectfully disagree with these rejections because *Couillet* does not anticipate Applicants' claims.

In order to form a basis for a rejection under 35 U.S.C. § 102(e), a prior art reference must disclose each and every element as set forth in the claim. MANUAL OF PATENT EXAMINING PROCEDURE § 2131 (2005). However, *Couillet* does not disclose "allowing the water-soluble relative permeability modifier to adsorb onto a surface within the subterranean formation," as recited in Applicants' independent claim 1, as amended herein. In particular, *Couillet* provides that:

all compounds of the fluid of the invention are blended at surface together with the proppant ...when this is subjected to a very high shear rate, the viscosity of this fluid is sufficiently low to allow its pumping downhole. There, the pumped fluid, carrying the proppant, is injected into the formation rocks to be fractured under high pressure. At that time, the fluid is sufficiently viscous for carrying the proppant through the fracture. The fluid then degrades by contact with hydrocarbons flowing through *the fracture*.

*Couillet*, page 19, line 34- page 20, line 9 (emphasis added). Thus, the fluid comprising hydrophobically modified polymers of *Couillet* simply flows into the open space of the fracture. *Couillet* does not disclose or suggest any effect on the permeability of the subterranean formation to aqueous-based fluids.

Moreover, *Couillet* does not disclose the adsorption of the hydrophobically modified polymer to a surface within the subterranean formation. Applicants have amended claim 1 herein to recite that the water-soluble relative permeability modifier adsorbs onto a surface within the subterranean formation. It is well known in the art that hydrophobically-modified relative permeability modifiers function by adhering to the formation matrix and attaching to adsorption sites on surfaces within the porosity of the formation. See U.S. Patent Application Publication 2005/0000694 by Dalrymple *et al.* In order for the hydrophobically-modified relative permeability modifiers of the present application to effect the permeability of the subterranean formation to aqueous-based fluids, they must penetrate and adsorb onto a surface within the subterranean formation. However, because the hydrophobically modified polymers of *Couillet* are present in a viscosified gel structure, they do not penetrate the subterranean formation, nor can they adsorb onto a surface within the subterranean formation. As a result, the compositions of *Couillet* do not possess the same physical properties and effects as the compositions of the present application, as described by the amended claims presented herein, because they will not penetrate within the subterranean formation.

For all of these reasons, Applicants respectfully assert that independent claim 1 is not anticipated by *Couillet*. Accordingly, Applicants respectfully request the removal of this rejection with respect to independent claim 1 and dependent claims 2-6 and 8-10, which all depend from claim 1, either directly or indirectly.

#### V. No Waiver

All of Applicants' arguments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinctions discussed by Applicants is sufficient to overcome the 35 U.S.C. § 112, first paragraph and anticipation rejections.

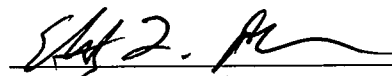
#### SUMMARY

In light of the above remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections and objections. Applicants further submit that the

application is now in condition for allowance, and earnestly solicit timely notice of the same. Because this response has been timely filed, Applicants respectfully request that the Examiner issue an advisory action if the Examiner does not find the claims to be allowable in light of the amendments and remarks made herein. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicants believe that no fees are due in association with the filing of this response. Should the Commissioner deem that any fees are due, including any fees for extensions of time, the Commissioner is authorized to debit Baker Botts L.L.P. Deposit Account No. 02-0383, Order Number 063718.0411, for any underpayment of fees that may be due in association with this filing.

Respectfully submitted,



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